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May 17, 2006

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

Re: MB Docket No. 03-15, WOLE-DT (Aguadilla, PR), Facility ID No. 71725
Request for Waiver of the July 1, 2006 Replication/Maximization Deadline

Dear Ms. Dortch:

Western Broadcasting Corporation of Puerto Rico, Inc. ("Western"), by counsel, hereby requests a waiver of the July 1, 2006 interim digital television ("DTV") construction deadline which requires that Western's DTV channel serve at least 80 percent of the number of viewers served by the 1997 facility on which Western's replication facility was based. As set forth herein, circumstances beyond Western's control will prevent Western from meeting the July 1, 2006 deadline. See Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, 19 FCC Rcd. 18279 (2004) ("Second Periodic Review Order"). In any event, compliance with the 80 percent coverage requirement using Channel 69 will result in severe financial hardship for the company.

BACKGROUND

Western has operated WOLE-TV Channel 12, licensed to Aguadilla/Mayaguez, Puerto Rico, for more than 46 years. The station's current NTSC operations are conducted from an antenna site at Monte del Estado (18° 09' 00" and 66° 59' 00") at an ERP of 275 KW. The FCC assigned Channel 69 to Western for WOLE's digital operations. See File No. BPCDT-1991101ABS (original construction permit). Western did not request that out-of-core channel for its DTV operations. However, Western will be required to vacate Channel 69, which has been designated for public safety use, in order to comply with the statutory mandate to reallocate the Channel 59-69 spectrum and clear all broadcast television licensees from this portion of the band. See 47 U.S.C. §337; Service Rules for the 746-764 and 776-794 MHz Bands and Revisions to Part 27 of the Commission's Rules, 16 FCC Rcd. 2703 (2001).

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Because Western will not be permitted to retain Channel 69 for DTV operations, it has informed the Commission that it intends to conduct post-transition digital operations on Channel 12, its current analog channel. The Media Bureau has accepted Western's tentative post-transition channel designation of Channel 12. See Tentative Digital Channel Designations for Stations Participating in the First Round of DTV Channel Elections and Second Round Election Filing Deadline, Public Notice, DA 05-2649 (rel. Oct. 4, 2005). Western has attempted to identify other channels for its DTV operations, but has been unable to do so.

In assigning Channel 69 to Western for its DTV operations, the Commission assumed that Western would be able to replicate its analog coverage from the existing antenna site at Monte del Estado by using an ERP of 691.8 KW. However, even assuming that Western could obtain and afford the requisite electrical power for such operations, the tower at Monte del Estado could not accommodate both the analog and digital facilities of WOLE. Consequently, Western currently operates its DTV facility from an antenna site in Pico Atalaya pursuant to special temporary authority ("STA"). The Media Bureau granted Western's initial application for an STA on September 14, 2002, and subsequently has extended the STA several times. WOLE-DT's current STA will expire on July 1, 2006. See File No. BEDSTA-20060105ACU (current STA). Western commenced DTV operations from facilities located in Pico Atalaya, Puerto Rico, pursuant to the STA on or about September 25, 2003.

Because Western was assigned an out-of-core channel for its DTV operations, it could have elected not to construct a DTV facility and to "flash-cut" to DTV operations on Channel 12 at the conclusion of the transition period. See Second Periodic Review Order at ¶95 However, rather than leaving digital viewers unserved during the transition period, Western has provided digital service by constructing Channel 69 and operating it during the transition period pursuant to an STA. Western's digital signal from the STA facility reaches a population of approximately 850,000 that would have been unable to receive any digital signal from Western had it elected to flash-cut.

Western's Efforts to Comply with the July 1, 2006 Deadline

In many previous filings with the Media Bureau relating to Western's efforts to comply with the original DTV construction deadline, Western has detailed the substantial effort and expense it has incurred to construct DTV facilities on a channel which it must abandon upon (or possibly before) the completion of the DTV transition. Western continues to encounter local obstacles beyond its control in its efforts to comply with the July 1, 2006 deadline.

The tower from which Western conducts its analog operations is located in Monte del Estado and cannot accommodate both the analog and digital operations of WOLE. Consequently, Western currently conducts digital operations pursuant to the STA from an antenna located in Pico Atalaya, Puerto Rico, on a tower owned by Western. Following

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release of the Second Periodic Review Order, Western commissioned engineering studies to determine if WOLE-DT could comply with the 80 percent coverage requirement using its current STA facilities. The engineering studies determined that the current STA facilities would not allow WOLE-DT to achieve the 80 percent coverage benchmark. Western then attempted to identify alternative tower locations in the Monte del Estado area, but has been unable to secure an alternative site upon which it could obtain the approvals necessary to construct a new broadcast tower.

Western also has explored the possibility of locating its digital operations on a new tower constructed by LIN Television ("LIN") in Monte del Estado, approximately 30 feet from the tower containing Western's current NTSC Channel 12 facilities. LIN owns Televiscentro de Puerto Rico ("Televiscentro"), the licensee of WAPA-TV, Channel 4. Western has entered into discussions with Televiscentro and LIN regarding the possible relocation of its Channel 69 DTV antenna to the LIN tower.¹ However, there are two problems with this alternative.

First, there are electrical system constraints that currently prohibit the delivery of sufficient electrical power to support the full-power operations of both Western's analog Channel 12 and the relocated DTV Channel 69. The relocation and operation of Channel 69 near the Western analog site will require the construction of a larger capacity electrical substation. Further, the construction of a larger capacity substation will not be allowed by the local electrical power authority because there is insufficient space to construct a larger capacity substation to support WOLE's operations.

Second, even if Western could obtain sufficient electrical power to support both the relocation of WOLE-DT to the LIN tower and the current operations of Channel 12, the costs of relocating the Channel 69 transmitter facilities to the LIN tower, obtaining the necessary electricity and maintaining DTV operations at that location are prohibitive, particularly for a facility that Western cannot keep because of its inability to retain Channel 69. Some of the estimated costs are set forth in Exhibit 1 hereto and total nearly \$1 million -- for a temporary facility.

The other alternative is the existing tower in Monte del Estado owned by the Puerto Rico Broadcasting Corporation ("PRBC"), which operates WIPM, Channel 3. However, that tower cannot support both the analog and digital operations of WOLE and the operations currently conducted by WIPM from that tower. In addition, electricity supply problems described above would prohibit simultaneous full-time operation of WOLE's analog and digital

¹ Western commissioned an engineering study of the feasibility of locating its Channel 69 DTV operations on the LIN tower. The study concluded that the Channel 69 antenna could be side-mounted on the LIN tower at a height of 277-300 feet without placing unacceptable stress levels on the tower. Further, under this scenario, if sufficient electric power were available and money was no object, WOLE-DT could reach the applicable 80 percent coverage requirement.

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facilities from that location as well. In any event, the PRBC has indicated that the tower will be taken down once all of the WIPM facilities are moved to the LIN tower. Western has entered into negotiations to buy the WIPM tower for its post-transition DTV operations on Channel 12.

I. CIRCUMSTANCES BEYOND WESTERN'S CONTROL NECESSITATE A WAIVER OF THE JULY 1, 2006 INTERIM CONSTRUCTION DEADLINE.

As the preceding section demonstrates, Western has undertaken substantial effort and expense to construct and operate WOLE-DT from the STA facilities during the transition period. Those efforts, and the current waiver request, must be viewed in the context of the unique Puerto Rico television market and the additional burdens imposed by WOLE's out-of-core DTV allotment. The FCC has acknowledged that unique economic and geographic factors make Puerto Rico a difficult market for establishing viable broadcast operations in areas outside of San Juan, such as western Puerto Rico, where WOLE-DT is based. See e.g., Application of Paxson Communications of San Juan, Inc., 16 FCC Rcd. 14139, 14143-44 (2001) ("Underlying this case are the circumstances that have driven many of our past satellite cases on the island of Puerto Rico - the mountainous topography and poor economic conditions outside the population center of San Juan."); Applications of Hector Nicolau, 5 FCC Rcd. 6370, 6371 (1990) ("In the past, we recognized that the severe and rugged terrain conditions existing in Puerto Rico have a significant limiting effect on the actual over-the-air coverage of television stations operating on this island.")

The FCC's reallocation policy for the Channel 59-69 spectrum creates an additional burden for Western. Specifically, Western already has spent significant time and money to construct a DTV facility on Channel 69 that it eventually must abandon. The required relocation of WOLE-DT to its post-transition position on Channel 12 will consume even more of Western's resources. The FCC has acknowledged "the additional burden" such relocation will place on licensees with out-of-core DTV allotments such as Western. See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, 13 FCC Rcd. 7418 (1998), at ¶55. Under the circumstances, expenditure of additional resources by Western to meet the 80 percent coverage requirement for a facility that it cannot keep and will not use in the long run, is unwarranted.

A. The Insufficient Electrical Power Capacity for DTV Operations at the LIN Tower Qualifies as an Unforeseen/Uncontrollable Circumstance.

In the Fifth Report and Order in the DTV proceeding, the FCC stated that it would "grant an extension of the applicable deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the licensee's

control....” See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd. 12809 (1997), at ¶77. Circumstances beyond the licensee’s control “include, but are not limited to, the inability to construct and place in operation a facility necessary for transmitting DTV, such as a tower, because of delays in obtaining zoning or FAA approvals, or similar constraints.” Id. The Second Periodic Review Order adopted these standards for reviewing petitions for waivers and extensions of the July 1, 2006 interim deadline. See Second Periodic Review Order at ¶87

As noted above, local electrical contractors retained by Western have informed Western that the current power line substation maintained by the local electric power company in Mayaguez/Aguadilla cannot deliver sufficient electricity to accommodate the operations of Western’s existing NTSC Channel 12 at Monte del Estado and the relocation of Channel 69 to the existing analog site or to the new LIN tower nearby. These local electrical contractors have informed Western that the electric power company will not allow the construction of a larger power line substation because there is insufficient space to comply with the power company’s regulations. Simply stated, the present electrical infrastructure in the relevant area of Monte del Estado will not allow for the simultaneous full-power operation of WOLE-DT and Channel 12’s current analog operations.

The Commission previously has granted the following extensions of DTV construction deadlines for electrical power problems similar to those facing WOLE-DT at the LIN Tower:

- WRFB-DT (Carolina, PR) (delay in receiving local permit for electrical power use at transmitter site);
- WVXF-DT (Charlotte Amalie, VI) (delay resulting from inability of electrical grid to support both analog and DTV operation); and
- WAWD-DT (Fort Walton Beach, FL) (delay in installation of electricity to transmitter site).

See DTV Build-Out Requests for Extension of the Digital Television Construction Deadline, Commercial Television Stations with May 1, 2002 Deadline, FCC 05-67 (rel. Mar. 15, 2005), at ¶¶12, 14; DTV Build-Out Requests for Extension of the Digital Deadline, Commercial Television Stations with May 1, 2002 Deadline, FCC 04-124 (rel. June 10, 2004), at ¶13. In both of these Orders, the FCC expressly recognized that these difficulties qualified as “uncontrollable and unforeseeable delays that warrant[ed] extension” of the applicable DTV construction deadlines. See FCC 05-67, at ¶16. The FCC should provide similar relief to Western in light of the apparent insufficient power at the LIN Tower.

**B. The Relocation of WOLE-DT to the LIN Tower
Will Cause Severe Financial Hardships for Western.**

Even assuming that Western could obtain the electricity necessary for full-power operation of its analog and digital facilities from Monte del Estado, the cost of relocating the Channel 69 facilities from Pico Atalaya to Monte del Estado, obtaining the electricity and maintaining the DTV operations for the remainder of the transition period would be prohibitive, particularly in light of the fact that Western cannot keep Channel 69. Western's engineering personnel have computed the approximate costs of relocating WOLE-DT's transmitter and related facilities for Channel 69 to the LIN Tower, which are set forth in Exhibit 1. The estimated cost of the relocation of the Channel 69 transmitter and related equipment totals nearly \$1 million. This estimated total does not include installation costs for some of these components, making the final total cost of the relocation even higher.

The substantial expense to relocate Channel 69 to the LIN tower does not constitute Western's "final payment" to complete the DTV transition. Rather, Western must vacate Channel 69 and establish its DTV operations on Channel 12 by the completion of the DTV transition. Western therefore will incur additional expenses beyond those outlined above and in Exhibit 1 to establish its post-transition DTV operations on Channel 12.

In the Second Periodic Review Order, the FCC recognized that a station such as WOLE-DT "that ends up operating in digital on its analog allotment would need to incur expenses to change its DTV operations to another channel." See Second Periodic Review Order at ¶46. In this context, the FCC expressed its intention "[t]o allow stations to minimize the cost of this phase of the DTV transition whenever possible...." Id. In other DTV-related decisions, the FCC has acted to enable broadcasters to achieve cost savings and efficiencies. See Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Nampa, Idaho), 19 FCC Rcd. 4491 (Vid. Div. 2004) (DTV table of allotments amended where proposal "could result in significant savings for a small market television station"); Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Albany, New York), 19 FCC Rcd. 4329 (Vid. Div. 2004) (DTV table of allotments amended where proposal, which included sharing of antenna and tower with another DTV channel and accompanying cost savings, represented a "reasonable business judgment" and an "efficient step" in completing DTV construction).

Western respectfully submits that grant of this request for a waiver of the July 1, 2006 interim construction deadline will serve the public interest. Rather than flash-cut to DTV operations in the future upon completion of the DTV transition, Western has worked diligently to overcome serious tower location and equipment problems in order to establish and maintain its current DTV operations in the challenging broadcasting market of Puerto Rico. Today, as a result of Western's actions, its digital signal reaches a population of approximately 850,000

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viewers in western Puerto Rico that would not receive DTV service at all from Western had Western elected to flash-cut. Western should not be penalized for providing that service during the transition period. By granting Western a waiver of the 80 percent coverage requirement, the FCC will enable Western to continue to provide DTV service on Channel 69 from the STA facility during the transition period while preserving its right to replicate its analog coverage with its permanent DTV operations on Channel 12 upon conclusion of the transition period.

For the reasons stated above, Western respectfully requests that the FCC waive the interim July 1, 2006 DTV replication/maximization deadline. If you have any questions regarding this request for a waiver of the July 1, 2006 replication/maximization deadline, please contact the undersigned.

Respectfully submitted,



Timothy J. Fitzgibbon
Thomas F. Bardo
*Counsel for Western Broadcasting
Corporation of Puerto, Inc.*

Cc: Shaun Maher, Esq.
FCC Media Bureau

EXHIBIT 1

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Request for Waiver by)	
)	MB Docket No. 03-15
Western Broadcasting Corporation)	
of Puerto Rico, Inc.)	
)	
For Waiver of the July 1, 2006)	
Replication/Maximization Deadline)	
)	

REQUEST TO WITHHOLD INFORMATION FROM PUBLIC INSPECTION

Western Broadcasting Corporation of Puerto Rico, Inc. ("Western"), by counsel and pursuant to Section 0.459 of the Commission's Rules, 47 C.F.R. §0.459, hereby requests that certain information contained in Exhibit 1 to its above-captioned Request for Waiver of the July 1, 2006 Replication/Maximization Deadline ("Waiver Request") be treated as proprietary and confidential information not available for public inspection. In accordance with Section 0.459(b) of the Commission's Rules, 47 C.F.R. §0.459(b), Western provides the following information in support of its request for confidential treatment.

1. Western today is filing a request for waiver of the July 1, 2006 interim digital television ("DTV") construction deadline which requires that Western's DTV channel serve at least 80 percent of the number of viewers served by the 1997 facility on which Western's replication facility was based.

2. Exhibit 1 to Western's Waiver Request contains detailed itemized cost information regarding the proposed installation of Western's DTV facilities in Monte del Estado, Puerto Rico. These itemized costs constitute sensitive financial information. Western

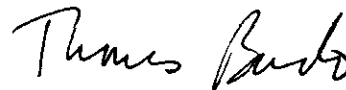
is a privately owned company, and such information is not available to the public. As a television broadcaster, Western competes with other broadcasters in the Western Puerto Rico area. Western believes that disclosure of the sensitive itemized cost information contained in Exhibit 1 to its Waiver Request would result in substantial competitive harm to Western.

3. For the reasons discussed above, Western respectfully requests that Exhibit 1 to its Waiver Request be withheld from public inspection in accordance with Section 0.459 of the Commission's Rules, 47 C.F.R. §0.459.

4. In the event the Commission denies confidential treatment of the information contained in Exhibit 1 to Western's Waiver Request, Western respectfully requests that this information be returned to the undersigned counsel pursuant to Section 0.459(e) of the Commission's Rules and not disclosed to the public. Any questions regarding this request should be addressed to the undersigned.

Respectfully submitted

May 17, 2006



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